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No. 616

IN THE

Supreme Court of the United States

ALLAN RUTLEDGE, JR., CARLTON E. STEVENS, KENYON W. KANTZ, CHARLES C. CONKLING, *Petitioners,*

vs.

UNITED SERVICES LIFE INSURANCE COMPANY, a body corporate, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT THEREOF

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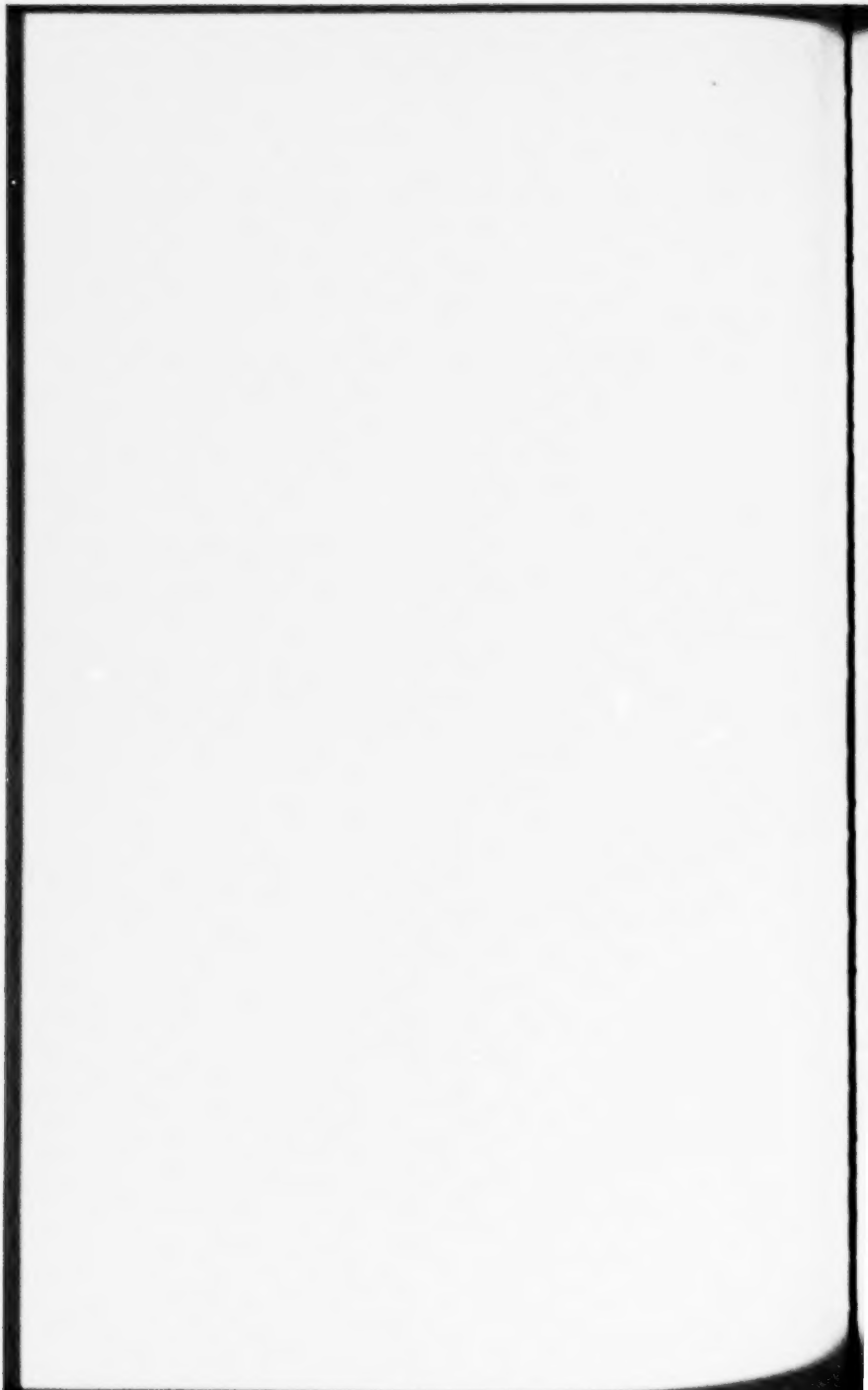

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vs.

UNITED SERVICES LIFE INSURANCE COMPANY, a body corporate, *Respondent.*

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, decided October 25, 1948; that a petition for rehearing was denied December 2, 1948. The Circuit Court affirmed the judgment of the District Court by a two to one decision, Circuit Judge Clark dissenting.

OPINIONS BELOW

Findings of fact and conclusions of law of the District Court are set forth (R. 67) and the opinion of the United States Court of Appeals for the District of Columbia Circuit appears (R. 76).

JURISDICTION

Ths jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A. 347).

QUESTION PRESENTED

May the United Services Life Insurance Company, respondent herein, relieve itself of the liability for payment of original and renewal premium commissions to petitioners and other salesmen who generated all of its business amounting to approximately Twenty Nine Million ($29,000,000.00) Dollars, and whose contracts did not permit them to write business for any other company, by cancelling its contract with the United Services Sales Department, and which corporation had been created for the express purpose of serving as its sole general agent, and who in turn employed petitioners and other salesmen?

STATEMENT OF FACTS

The United Services Life Insurance Company was organized in 1937 under the laws of the District of Columbia and licensed to do business on January 28, 1939. Its purpose was to create a life insurance company whose stockholders and policy holders should be limited to officers in the armed services of the United States and their families (R. 22). The president of the United Services Life Insurance Company was one Samuel H. Emerson who, also in the year 1939, organized a company known as the United Services Sales Department, Inc., and of which he was elected president (R. 22). The latter company was organized for the sole purpose of selling life insurance policies issued by the United Services Life Insurance Com-

pany (R. 22). The two corporations entered into a contract approximately two days after respondent was licensed to sell insurance, whereby the United Services Sales Department, Inc., was given exclusive rights as general agent for the sale of said insurance policies for a period of thirty years (R. 22). In mentioning the two corporations hereafter they will be referred to as the *Life Company* and the *Sales Department*. The original contract between the two companies was signed by *Samuel H. Emerson as President of both corporations,* and after it had been in force for a period of time, *it was re-executed* and a second contract was entered into by the two companies. The second contract was signed by *Samuel H. Emerson as President of the Sales Department,* and by *O. R. Leverett as Secretary of the Life Company,* but at that time *Samuel H. Emerson was still President of both companies.*

Following the execution of the original contract between the two companies, the Sales Department entered into various contracts with the four petitioners and other agents for the sale of life insurance policies issued by the Life Company, all contracts being similar to that of petitioner Allan Rutledge (R. 22), whose contract is in the record (R. 37). Under the terms of these contracts, the agents were to sell life insurance policies to service officers and their families; and, within a period of two years and eleven months, the agents placed in excess of *Twenty Nine Million* ($29,000,000.00) *Dollars in life insurance policies on the books of the Life Company* (R. 23). *The Petitioners paid all their own expenses in connection with the sale of said insurance, and supplied their own transportation.*

On December 7, 1941, the United States of America was attacked, that date marking the beginning of World War II. On that date the Life Company was directed by its President Samuel H. Emerson not to issue further policies

until its underwriting policy could be revised. This direction was communicated to all the agents of the Sales Department (R. 61). The Sales Department was then advised that no further commission payments would be made to that corporation under the terms of the contract (R. 24).

Prior to March 1, 1942, the Life Company had paid to the Sales Department the sum of $310,491.13 as commissions and renewal premiums, of which amount $248,654.91 was paid either by the Sales Department or by the Life Company to the agents of the Sales Department for their services in soliciting the insurance contracts accepted and issued by the Life Company (R. 61-62). In January and February, 1942, the Life Company paid the agents approximately $20,725.57 representing commissions due them under their contracts with the Sales Department (R. 61). Thereafter the Life Company made no further payments either to the Sales Department or to the agents.

On December 13, 1941, the Board of Directors of the Life Company ousted Samuel H. Emerson as its President and elected Col. Merritt B. Curtis as President (R. 24); and on March 20, 1942, the Life Company through action of its Board of Directors rescinded the contract with the Sales Department, and instituted an action in the United States District Court for the District of Columbia, to cancel and void the contract (R. 24). The case is entitled *United Services Life Insurance Company* v. *United Services Sales Department and Samuel H. Emerson,* Civil Action No. 15-535. The trial consumed nearly two weeks, and was referred to the Auditor who issued lengthy findings (R. 49), the sum and substance of which was that as of March 20, 1942, no benefit accrued to the Life Company under the terms of its contract with the Sales Department. The Court adopted the auditor's findings, *voided and cancelled the contract and declared it to be fraudulent in its inception.* (R. 25.) For reasons unknown to Petitioners, the Sales Department did not appeal from this decision.

On February 28, 1945, Petitioners Kenyon Kantz and Charles Conkling filed complaints in the District Court against both the Life Company and the Sales Department for an Accounting, Discovery, and Money Judgment (R. 6-7), and on March 6, 1945, Carlton E. Stevens filed a similar complaint (R. 4), as did Allan Rutledge, Jr., on March 30, 1945 (R. 2). In view of the fact that the position of all Petitioners appeared identical and the cases similar of nature, it was agreed by counsel that the four cases should be consolidated for trial (R. 19). A prior case of *Farish Talley* v. *United Services Life Insurance Company and United Services Sales Department*, Civil Action No. 27-878, was filed in the United States District Court for the District of Columbia, the facts of which were similar to the instant case, and was decided adversely to the plaintiff and in favor of the Life Company. It was agreed between counsel that certain portions of the foregoing case should be incorporated in the instant case by reference (R. 20).

Allan Rutledge, Jr., one of the four Petitioners, was the only witness to testify for the plaintiffs, and inasmuch as the presiding judge had heard the case of *Farish Talley* v. *United Services Life Insurance Company, et al.*, counsel for the respondent requested the Court to accept the previous testimony offered by the Life Company in the *Talley* case as if the same evidence had been presented in the instant cases, as all were identical and the testimony would be the same. This was done (R. 21-22). At the conclusion of the hearing, the Court took the cases under advisement; permitted counsel to submit briefs; and on April 17, 1947, entered judgments in favor of the United Services Life Insurance Company, and dismissed the complaints of plaintiffs (R. 70). The total approximate claims of the four petitioners for original commissions and commissions on renewal premiums due at the time of filing their respective complaints amounted to Thirty Six Thousand Five Hundred ($36,500.00) Dollars, exclusive of subsequent com-

missions due on renewal premiums paid to the Life Company. *The Life Company has at all times remained in business with offices in the District of Columbia,* while the Sales Department is not to be found in the District of Columbia, and, so far as your Petitioners know, is without assets since the recission of its contract by the Life Company.

An appeal from the decision of the District Court was taken to the United States Court of Appeals for the District of Columbia Circuit, which Court affirmed the judgment of the Court below in a *two to one decision.*

REASONS FOR GRANTING THE WRIT

1. There seems to be no law on the question involved and this case appears to be the first of its kind to be presented to our Courts.

2. Petitioners and other salesmen who generated this large volume of life insurance sales come from all sections of the country, and the decision rendered in this case is not a matter of purely local interest, but is in fact, a matter of nation-wide interest, and concerns the public in general.

3. Respondent, United Services Life Insurance Company should not be permitted to enjoy the fruits of petitioners' efforts and labor without justly compensating them for their services.

PRAYER FOR WRIT

Wherefore, petitioners pray for a writ of certiorari to be issued under the seal of this Court directed to the United States Court of Appeals for the District of Columbia Circuit, commanding that Court to certify and send to this Court a complete transcript of the record and all proceedings in the instant case, so that the cause may be reviewed and determined by this Court, and that the judg-

ment of the United States Court of Appeals for the District of Columbia Circuit may be reversed and that petitioners may be granted such other and further relief as may seem proper.

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UNITED SERVICES LIFE INSURANCE COMPANY,
a body corporate,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

SUMMARY OF ARGUMENT

1. Certiorari should issue to correct the judgment of the United States Court of Appeals for the District of Columbia Circuit, in which there was a dissent.

2. Certiorari should issue to determine whether the United Services Life Insurance Company can relieve itself of the liability for payment of original and renewal premiums to petitioners and other salesmen who generated ap-

proximately Twenty Nine Million Dollars of life insurance sales, of which respondent is now enjoying approximately Twenty Six Million Dollars.

3. Certiorari should issue to determine whether the respondent is entitled to this enrichment derived from the large volume of sales by petitioners and other salesmen without paying just compensation therefor.

ARGUMENT

The facts in the instant case and the questions presented appear to be of first impression. We have been unable to find a case in point heretofore decided by any Court. This case clearly reveals that petitioners are victims of an unusual set of circumstances beyond their control. *Relief in some form should be granted them.*

There are two corporations directly concerned. *The Life Company,* respondent herein was organized for the express purpose of issuing life insurance policies to be sold only to officers in the armed services of the United States and their families, while the *Sales Department* was created for the sole purpose of functioning as the *exclusive general agent* (R. 22) *of the Life Company.* The actual relationship between petitioners and the two companies presents a clear and distinct picture supporting the contention that petitioners' contracts with the Sales Department, were ratified by, and were virtually those, of the Life Company. It is conceded that the Life Company as such did not directly employ any salesmen to sell its insurance policies, and in referring to the contract between the two companies, paragraph 7, in which the Sales Department is referred to as the party of the second part (R. 31) it is stated:

> "The party of the second part agrees to absorb all commission paid to salesmen in pursuance of its duties hereunder".

So far as petitioners and other salesmen were concerned, both companies *were one and the same.* The Life Company was fully aware of petitioners' contracts with the Sales Department, and the fact they were to receive a certain percentage of first year's premiums and of renewal premiums (R. 43). Paragraph six of the contract between the two companies in which the Life Company is referred to as the *First Party,* reads as follows (R. 30)

> "The party of the first part agrees to absorb all acquisition and supervision costs including in part the cost of furnishing rate books, supplies and other necessary material, as well as suitable office space, clerical assistance and all other expenses required by the party of the second part in the performance of its duties hereunder."

During the period of time that both the Life Company and the Sales Department were in operation they:

1. OCCUPIED THE SAME OFFICES.

2. THE ENTIRE OFFICE RENT WAS PAID BY THE LIFE COMPANY.

3. ALL OPERATING EXPENSES OF THE SALES DEPARTMENT WERE PAID BY THE LIFE COMPANY SUCH AS CLERICAL ASSISTANCE, ADVERTISING, TELEPHONE, TELEGRAPH AND STATIONERY (R. 59).

4. THE TWO COMPANIES WERE SO CLOSELY ALLIED AND INTERWOVEN IN THEIR JOINT ACTIVITIES THAT NO IDENTIFYING INSIGNIA APPEARED ON THE DOOR OF THE OFFICES OR ELSEWHERE TO INDICATE THAT THE SALES DEPARTMENT WAS A SEPARATE AND DISTINCT ORGANIZATION FROM THE LIFE COMPANY (R. 68).

5. THE LIFE COMPANY SUPPLIED THEM WITH BUSINESS CARDS AND ADVERTISING MATERIAL (R. 23).

In view of the operation of the two corporations, we urge that petitioners had every reason to believe their contracts with the Sales Department in fact amounted to contracts with the Life Company, and created a status of principal and agent by which the Life Company was bound. In this regard corporations are liable to the same extent as natural persons; in fact the doctrine of identity of principal and agent applies with peculiar propriety to corporations, which are capable of action only through the medium of agents, and which touch, infringe upon, and come into contact with individuals, and the public, only by means of their agents and servants.

Again referring to the contract between the two corporations: It insured the payment of original commissions and commission on the renewal premiums even though the contract could be cancelled, paragraph 13 reading as follows (R. 33):

> "The parties hereto agree that this contract may be terminated by mutual agreement, provided, that such termination shall in no way affect payment of the renewal and first year commissions payable under this contract on all business in force on the date of such termination".

Notwithstanding the terms of the above paragraph, following the recission by the Life Company of its contract with the Sales Department, petitioners and other salesmen found themselves in an unusual position in that they did not resign or cancel their individual contracts, nor were they discharged for cause, and in fact they did nothing to terminate their association with either the Sales Department or the Life Company. Petitioners are however denied the benefit of their efforts and labors because of the recission of the contract between the principal *and its one and only general agent.* It is respectfully contended that so far as the rights of petitioners are concerned, the termination of the general agency was wrongful; but, once accomplished, there was created on the part of the Life Com-

pany a manifest duty to carry out the various contracts with petitioners and other salesmen, and to have seen to it that first year commissions and those on renewal premiums were paid on every premium paying policy in force, citing *Hercules Mutual Life Assurance Society* v. *Brinker,* 77 N. Y. 435; *Fass* v. *South Atlantic Life Insurance Company,* 105 S. C. 107, 89 SE 558; *Heym* v. *New York Life Ins. Company* (1908) 192 N. Y. 1, 84 N. E. 725; *Central State Life Insurance Co.* v. *Walker* (1930) 143 Okla. 168, 287 Pac. 997. The foregoing cases are reported in 79 A. L. R. 487 and deal with the right of insurance agents to renewal commissions after a contract has been terminated.

It is quite interesting to note the apparent concern of Col. N. B. Curtis for the many salesmen who had sold his Life Company's insurance policies. Col. Curtis was elected President of the Life Company on December 13, 1941 (R. 24) to succeed Samuel H. Emerson. On April 7, 1942, he wrote a letter to Farish Talley, one of the agents, and in part stated (R. 69):

> "* * * AS I TOLD YOU BEFORE, WE HAVE NO DIFFERENCES WITH THE SALES FORCE, AND THE COMPANY STANDS READY TO PAY THESE COMMISSIONS AS SOON AS IT CAN BE LEGALLY DETERMINED THAT THE COMPANY IS AUTHORIZED TO DO SO."

Particular attention is called to the case of *Hirschmann* v. *Bank of Dassel,* 21 F. 2d 263, the facts of which were as follows: One McGrew, a life insurance agent, soliciting business with Reserve Loan Life Insurance Company of Indiana for certain counties in Minnesota, was an agent by reason of his contract with Hirschmann, the general agent of the company for the State of Minnesota. The contract called for a commission on first premium on each policy and a commission on renewals. To secure an indebtedness to the Bank of Dassel, McGrew assigned to the bank his renewal commissions, and the life insurance company paid in excess of $900.00 to the bank under the said

assignment but subsequently ceased payments because of the claim of Hirschmann and others to the renewals. The bank then sued for an accounting and the life company answered admitting McGrew's agency by reason of the contract with Hirschmann and asked that Hirschmann be required to interplead and further requested that it be permitted to pay the renewal commissions into the court for the benefit of the person whom the court might hold to be entitled thereto.

The court held that *McGrew was an agent of the company and not of the general agent, by whom he was appointed with approval of the company,* and accordingly the company was held liable directly to McGrew for commissions on the renewal premiums. The court further called attention to the fact that numerous cases had been cited relating to liability of insurers to agents under contracts which were more or less similar to that under which McGrew operated *but remarked that they were not particularly helpful because none were identical to the present case,* which, said the court, "must be decided upon its own peculiar facts and circumstances."

This case indicates that courts will look beyond the express terms of a contract and require the payment of commissions on renewals when the equities of the case are such that it is only by looking beyond the express terms that justice can be done.

The equities of the present cases require that the Court look beyond the contract between the petitioners and the Sales Department.

For the purpose of considering the claim of petitioners for payment of first year commissions and renewal premiums thereafter, their contracts with the Sales Department should be considered in fact as contracts with the Life Company as we have contended.

Can it be seriously contended that petitioners and other agents through their sole efforts having placed in excess of $29,000,000.00 of life insurance sales on the books of the Life Company (R. 23) should be denied the fruits of their efforts because a contract to which they were not parties has been declared fraudulent? *The Life Company does not contend it suffered any loss as result of being a party to the so-called illegal contract.* We respectfully submit that the agents were the only ones who really suffered, for at their own expense and effort after selling the vast volume of insurance (of which amount there still remains in excess of $26,000,000.00 on the books of the Life Company) they are unable to collect their rightful commissions. We sincerely feel that the petitioners have been denied justice by the ruling of the courts below in holding they may not look to the Life Company for payment even of original commissions because their individual contracts were with the Sales Department.

It is respectfully asked, are the facts in this case such that the strict application of the law of contract should be the controlling factor? We think not. It is a situation where equity must be done and the maxim, "Equity will not suffer a wrong to be without a remedy" most surely may be invoked in this case. This maxim, it has been well said, underlies the whole jurisdiction of equity. If there is a clear right which has been violated, and the law affords no remedy, it necessarily follows that equitable principles should be interposed, provided only it be not merely a moral right, but a juridical right, that is, a right which may properly be vindicated or redressed by a court, and we submit such is the case now presented on behalf of petitioners.

Paragraph 7 of the Findings of Fact of the District Court states (App. 68):

> "That on February 20, 1946, in an action instituted by the life insurance company as against sales de-

partment, a coordinate division of this Court set aside the exclusive sales contract between the life insurance company and the sales department on the ground that such contract was fraudulent and contrary to public policy."

If the contract between the Life Company and the Sales Department was fraudulent in its inception, can it justly be said that the Life Company was not equally a party to the fraud? Every responsible person connected with the Life Insurance Company from its inception knew that the Sales Department would be created as its sole general agent; every one knew that Samuel H. Emerson would be president of both corporations; and every one had knowledge (R. 58) that Emerson was the owner of the company created for the express purpose of becoming the exclusive general agent of the Life Insurance Company.

Furthermore, written approval of the contract between the two companies was given by the Secretary of the Life Insurance Company by the actuary of the Life Insurance Company, and by the then Superintendent of Insurance of the District of Columbia; and these letters of approval were read to the stockholders. (R. 56).

Therefore, if there was fraud in the contract, the directors, the officers, and the stockholders of the Life Insurance Company are not free from blame. And certainly, they should not now be permitted to disclaim liability to the petitioners on the ground of a fraudulent contract. Especially is this true when one considers that there was never any suspicion of fraud until after the petitioners and their fellow agents had generated more than twenty nine million dollars worth of business for the company.

It was not until December 7, 1941, the beginning of World War II, that the issuance of further policies by the Life Company was discontinued, and it was not until March 20, 1942 (R. 24) that the Life Company decided to rescind its contract with the Sales Department. From

June 21, 1939, up to March 20, 1942, it is a conceded fact that the officers and directors of the Life Company approved the contract with the Sales Department. It was only when an emergency arose that they sought to rescind it because it was generally felt that the policies, being exclusively on the lives of officers in the armed services of the United States, were considered to be without value due to the fact that said policies did not contain a war exclusion clause. The foregoing contention appears to be the theory adopted by the Auditor in his Findings of Fact in the case of *United Services Life Insurance Company* v. *United Services Sales Department and Samuel H. Emerson,* Civil Action No. 15-535, (R. 67).

Following the date on which the Life Company ceased writing insurance (Dec. 7, 1941) and rescinded the contract with the Sales Department (March 20, 1942), *it continued to function and carry on its business. The Life Company survived the war period and is operating and doing business with apparent success at 1600 20th Street, N. W., in the District of Columbia.* The company still has on its books in excess of $26,000,000.00 worth of business produced by appellants and other agents. (R. 26).

It is unfair and unjust that this company should be permitted to continue to receive the renewal premiums on this vast amount of insurance while denying to the persons who generated the business their just compensation on the ground of a fraudulent contract of its own making.

It is an established principle that one shall not be permitted to enrich himself at the expense of another contrary to equity.

It is a conceded fact that petitioners' contracts were not with the Life Insurance Company, but with the Sales Department. However, the fact they had no direct contract with the Life Insurance Company itself is immaterial when seeking compensation on the ground of the unjust enrichment which the Life Insurance Company enjoys. And this

is so because the doctrine of unjust enrichment is not contractual, but equitable, in nature. *State* v. *Martin*, 130 P. 2d 48, 59 Ariz. 438.

It must be conceded by respondent that the insurance placed on its books by the various agents is of value; and that profits have arisen therefrom to support the continued operation of the Life Company *and the payment of substantial salaries to its officers.* It goes without argument that all life insurance companies employ general agents, agents and/or salesmen to procure and sell contracts of life insurance, and it is a recognized fact that such business is not obtained without great effort and toil. The petitioners were obliged to defray all their own expenses in obtaining the business now enjoyed by the Life Company, and supply their own transportation in the solicitation thereof (R. 23). There has been no contention on the part of the Life Company that the commissions paid by it on the sale of insurance policies or on the premium renewals are unusual or higher than the prevailing rates paid by other life insurance companies. The Life Company, notwithstanding the benefits it has derived, has assumed the position that since the contract between it and the Sales Department has been cancelled and rescinded, its responsibility has ended so far as petitioners' and other agents' rights are concerned. It is urged that such contention is inequitable, and presents a case on all fours with the principle of unjust enrichment.

The Life Company has received something of value at the expense of petitioners, and under such circumstances that fact should impose a legal duty of payment to them of the commissions now due. In the case of *Hummel* v. *Hummel*, 14 N. E. 2d, 923, it was held that "unjust enrichment" of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

Can it be denied but that there has been a retention by the United Services Life Insurance Company of the original

commissions and commissions on renewal premiums, which in equity and fairness belong to the petitioners? It is a conceded fact that all insurance companies employ agents or salesmen to sell their policies; and, by the ruling of the court below, we find respondent in the unique position of receiving benefits of the agents' efforts at no cost to it since March 20, 1942 (R. 24). Surely the Life Company is retaining something of value belonging to petitioners, and should not be permitted to profit or enrich itself at the expense of the various agents contrary to equitable principles.

In the case of *Hardgrove* v. *Bowman*, 116 P. 2d 336, 10 Wash. 2d 136, it was stated that the underlying theory of the "unjust enrichment" doctrine is that, where one expends money and labor in the improvement of the property of another on the faith of an unenforcible contract, he is, on repudiation of the agreement by the owner, entitled to be reimbursed for the improvements enhancing the value of the property.

While the court below found the appellants had no direct contract with the Life Company, the fact nevertheless remains that the various agents, including petitioners, expended their money and labor in building the business of the Life Company and, as in the case above cited, they are entitled to be reimbursed for their efforts, even if the court should consider the same to be compensable only on a quantum meruit basis.

It is accordingly urged that the United Services Life Insurance Company should not be permitted to accept the benefits from the sale of life insurance generated by petitioners and deny them payments of their rightful commissions nor should it be permitted to unjustly enrich itself as a result thereof.

CONCLUSION

In conclusion, it is respectfully submitted that to permit the United Services Life Insurance Company to retain the benefits of the so-called fraudulent contract to which it was a party and to refrain from paying the petitioners their rightful commissions on the insurance policies sold, and who were not a party to the contract, would be a total disregard of all principles of equity. On the basis of the foregoing, we urge, and it is most respectfully submitted, that the writ of certiorari should issue.

(All emphasis supplied.)

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Summary of Argument.

1. The question involved is strictly one of local law which this court will not disturb.

2. No federal law, federal question, or proposition of diversity among circuits is involved.

3. The United States Circuit Court of Appeals for the District of Columbia correctly decided this proposition in accordance with recognized authority of the federal and state courts.

4. The suggestion of unjust enrichment accruing to the respondent is unsupported by the record and is directly contrary to the determination of the Auditor of the Trial Court, supported by the confirmation on the part of the Trial Court that no advantage to the respondent insurance company was realized by reason of the business put on the books by the petitioner insurance agents.

Argument.

I.

The question involved is strictly one of local law which this court will not disturb.

This Honorable Court ordinarily will not examine a question of strictly local law determined by the United States Circuit Court of Appeals for the District of Columbia, the Court of last resort in this jurisdiction.

There is nothing novel involved in this case. The Court of Appeals simply determined that the petitioner agents had contracts with the United Services Sales Department, a separate, corporate entity from the United Services Life Insurance Company, and had no contracts whatsoever with the life insurance company. Its decision is predicated largely on the well recognized proposition that the right of an insurance agent to renewal commissions must be bottomed on express contract with the insurance company from which collection is sought.

As for the finality of the determination of the United States Circuit Court of Appeals for the District of Columbia on a question of purely local law, it is noteworthy to observe that, as recently as January 17, 1949, Mr. Justice Black, in the case of *Spiegel* v. *Commissioner of Internal Revenue,* .... U. S. ....; 93 L. Ed. Adv. Opinions 327-333;

> "* * * Under these circumstances we will follow our general policy and leave undisturbed this Court of Appeals holding on a question of state law."

This Court has frequently recognized that sound judicial policy and administration require that the determination of local law in the District of Columbia be left to the United States Court of Appeals for the District of Columbia. As illustrative of this policy, in *Fisher* v. *United States,* 328 U. S. 463, 476, this Court (Mr. Justice Reed) said:

> "Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere. District of Columbia v. Pace, 320 U. S. 698, 702; Busby v. Electric Utilities Union, 323 U. S. 72, 74-5."

And in *Del Vecchio* v. *Bowers,* 296 U. S. 280, 284, the following appears:

> "We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited, or which declare the common law of the District."

II.

No federal law, federal question, or proposition of diversity among circuits is involved.

There is totally lacking in this case any of the grounds that ordinarily exist as the prerequisite to this Honorable Court issuing the writ of certiorari for the purpose of examining the determination of the courts below. No federal statute is involved. There is no federal question concerned. There is cited nothing in the way of diversity either among the circuits themselves or between circuits on one hand and state courts of last resort. Indeed, one of the principal cases in support of respondent's contentions in this case is that of *Masden* v. *Travelers' Insurance Company,* decided by the Eighth Circuit, and in effect holding that the right of an insurance agent to collect renewal premiums must be bottomed on express contract between the agent and the company sought to be charged.

III.

The United States Circuit Court of Appeals for the District of Columbia correctly decided this proposition in accordance with recognized authority of the federal and state courts.

The leading authority in support of the position taken by the respondent in the instant case is *Masden* v. *Travelers' Insurance Company*, 52 F. (2d) 75. As reprinted in 79 A.L.R. 469, it will be observed that the annotation cites cases in support from Alabama, Arkansas, Connecticut, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Oklahoma, Tennessee, and Texas.

IV.

The suggestion of unjust enrichment accruing to the respondent is unsupported by the record and is directly contrary to the determination of the Auditor of the Trial Court, supported by the confirmation on the part of the Trial Court that no advantage to the respondent insurance company was realized by reason of the business put on the books by the petitioner insurance agents.

The petitioners in this case insist that the respondent insurance company unjustly has been enriched without compensation flowing to the agents who procured this business. This suggestion really calls for this Honorable Court at this stage of the proceedings to arrive at a finding of fact, independently of the Trial Court and without having before it the entire record in the cases involved. It is respectfully submitted that a finding of fact is the prerogative of a trial court, either to be approved or disapproved by a reviewing court.

Again, the claim of unjust enrichment is contrary to the record of this case and collateral cases below. The Auditor of the Trial Court, who sits as a Special Master for the purpose of determining disputed questions of fact, found

that no advantage had accrued to the insurance company, and this finding was specifically confirmed by the Trial Court (R. 66). Examination of the record reveals the fact to be that the agents of the United Services Sales Department collected approximately a quarter of a million dollars in commissions from the Sales Department and turned to the life insurance company for remuneration, only when the directors of the life insurance company rescinded the general agency contract with the sales department. This contract between the life insurance company and the sales department, it was observed by the United States Circuit Court of Appeals, was heavily loaded in favor of the sales department as against the insurance company, (R. 77).

Conclusion.

On the basis of the foregoing it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully,

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